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May 1, 2009

Ms. Tracy Egoscue, Executive Officer  
Los Angeles Regional Water Quality Control Board  
320 West Fourth Street, Suite 200  
Los Angeles, CA 90013

**Re: Comments on the Tentative Waste Discharge Requirements (WDRs) and National Pollutant Discharge Elimination System Permit (NPDES) – Joint Outfall System- Pomona Water Reclamation Plant (NPDES Permit No. CA0053619, CI #0755) and San Jose Creek Water Reclamation Plant (NPDES Permit No. CA0053911)**

Dear Ms. Egoscue:

On behalf of Heal the Bay, we submit the following comments on the *Tentative WDRs and NPDES Permit for the Pomona Water Reclamation Plant* (“Pomona Tentative Permit”) and the *Tentative WDRs and NPDES Permit for the San Jose Creek Water Reclamation Plant* (“San Jose Creek Tentative Permit”) or (“Permits”). We appreciate the opportunity to provide these comments.

Heal the Bay is supportive of many aspects of the Tentative Permits. For instance, we support the inclusion of monitoring of contaminants of emerging concern (CECs), including the addition of monitoring requirements for endocrine disrupting chemicals and pharmaceuticals to the Pomona Tentative Permit, the increased monitoring of selenium in the San Jose Creek Permit, and the inclusion of WQBELs for constituents present in the applicable TMDLs to both Tentative Permits.

However, the Tentative Permits have several issues that should be resolved. For instance, we are concerned that the Permits include a chronic toxicity trigger instead of a numerical limit. In addition, we urge the Regional Board to modify the monitoring and reporting program to ensure that the frequency of sampling is sufficient to capture variability and ensure water quality standards are maintained. These comments and others are detailed below.

**The Tentative Permits should include a numeric target for chronic toxicity of 1 TUc.**

Similar to our concerns expressed with the Valencia Water Reclamation Plant draft permit and other POTWs that have come before the Regional Board recently, the re-issuance of the Permits for the Pomona and San Jose Creek Water Reclamation Plants brings to light the unresolved issue of chronic toxicity limits in NPDES permits. A chronic toxicity trigger was established in the current permits, in Order R4-2004-0099 for the Pomona Water Reclamation Plant and in Order R4-2004-0097 for the San Jose Creek Water Reclamation Plant adopted by the Los Angeles Regional Water Quality Control Board over five years ago, and is again established in the Tentative Permits. The current permits specifically attributed use of the toxicity trigger to the State Board 2003 Decision regarding chronic toxicity limits.



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As Heal the Bay discusses in the recently released report “License to Kill: The Ineffectiveness of Toxicity Testing as a Regulatory Tool in the Los Angeles Region, 2000-2008”, there have been many instances of acute and chronic toxicity in discharges and receiving waters throughout our region that do not get the appropriate follow-up from dischargers or Regional Board staff due partially to the lack of clear toxicity limits placed in permits. As you know, the State Board delayed making a decision on the chronic toxicity issue and stated “[chronic toxicity] is best addressed through a rulemaking in order to allow full public participation and deliberation. The Board intends to modify the Policy for Implementation of Toxics Standards for Inland Surface Waters, Enclosed Bays, and Estuaries of California to specifically address this issue.” WQO 2003-0013. However to date, the State Board has not issued any policy on this issue. While we have anxiously waited for toxicity policy, too many major NPDES permits have gone forward without numeric effluent limits for chronic toxicity. We are disappointed to note that these Tentative Permits also contains a weak 1 TUc *trigger* that has no teeth. As you would likely agree, toxicity limits are the safety net for NPDES permits because permits do not require monitoring or have limits for all constituents that can cause receiving water toxicity. An effluent limit of 1 TUc would help to protect beneficial uses and meet the narrative toxicity objective set forth in the Basin Plan.

As mentioned in the *License to Kill* report, the State Board and regional boards should work together to expedite the chronic toxicity policy. It is inexcusable that it has taken this long to see movement on this critical issue, after the State Board’s determination in 2003 that a policy is necessary. After six years and dozens of comment letters asking for such a policy, we are hopeful that the State Board may finally release a draft policy based on comments made by their staff after the release of Heal the Bay’s in January 2009.<sup>1</sup> However, State Board staff suggested that the draft policy would be released in spring 2009, and it is already May 2009. The Regional Board should work together with the State Board to ensure that this happens as planned.

**The Regional Board should use best professional judgment (“BPJ”) instead of reasonable potential analyses (“RPA”) in establishing water quality-based effluent limitations (“WQBELs”) for the Tentative Permits.**

The Regional Board utilized the RPA approach to determine which constituents should have effluent limitations included in the Permits. As we have commented many times in the past, this approach is bad public policy for several reasons. This RPA approach can *greatly* reduce the number of WQBELs in an NPDES permit. For instance, the list of effluent limitations in the Pomona Tentative Permit (Table F-8 Tentative Permit at F-48) is less than half that of the current permit for Pomona WRP (Table F-2 Tentative Permit at F-6). The list of limits in the San Jose Creek Tentative Permit has been greatly reduced as well. This is cause for major concern. While we understand the need for adapting permits to account for changes that occur between permit cycles, we also see that the current practice of the RPA approach favors dropping constituents and weakening the monitoring programs from the current permits, creating progressively less protective permits with every permitting cycle.

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<sup>1</sup> Interview with Jonathan Bishop, Chief Deputy Director State Water Resources Control Board. KCRW Radio. January 8, 2009 7:00pm. Which Way L.A.? *Toxic Conditions in Southern California*.  
[www.kcrw.com/news/programs/ww/ww090108toxic\\_conditions\\_in](http://www.kcrw.com/news/programs/ww/ww090108toxic_conditions_in)



Even if the Permittee does not have a problem meeting the remaining effluent limits, the Regional Board should include these limits in the Permits as a safety net to ensure that objectives are met in the future. This is particularly important because, as mentioned above, the safety net that would have been provided by a hard toxicity limit is currently absent from the Tentative Permits. The RPA approach should not grant dischargers “free exceedances” of the priority pollutants and other constituents without a risk of enforcement. Further, including additional WQBELs in the Tentative Permits would provide no additional burden to the Permittee, as they would only need to maintain current wastewater performance. Thus, the Regional Board should employ BPJ in prescribing WQBELs in the Tentative Permits and not the RPA approach.

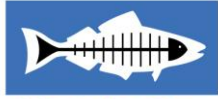
**The Regional Board should not decrease effluent sampling/monitoring frequencies.**

If the Board fails to include WQBELs in the Tentative Permits for all the constituents in the current permits, then this is even more of a reason why, at a minimum, monitoring frequencies should be maintained. The required monitoring frequency of multiple constituents in effluent has decreased from the current monitoring provisions. For instance, with the exception of a thallium and THMs, the monitoring frequency of most constituents in the Pomona Tentative Permit, especially metals, has decreased from monthly to quarterly or to semiannually. This reduction in monitoring is also the case for a number of constituents in the San Jose Creek Tentative Permit, as many priority pollutants are proposed to be monitored semiannually instead of quarterly. What was the reason for these changes? The decreases in monitoring frequency weaken the ability of the monitoring programs to account for variability and ensure that water quality standards are maintained. As many of these constituents can be highly toxic to marine life, their monitoring frequency should be maintained. For the reasons listed earlier, without sufficient monitoring to capture variability, the RPA approach will be even more detrimental when it is completed for future permits.

**The WQBEL for metals from the San Gabriel Metals TMDL should apply in both wet and dry weather.**

The Pomona Tentative Permit includes numeric effluent limits for lead only during wet-weather flows of greater than or equal to 260 cubic feet per second in San Gabriel Reach 2, and the San Jose Creek Tentative Permit contains effluent limits for copper only during dry-weather. This approach is inappropriate as the California Clean Water Act Section 303(d) List of Water Quality Limited Segments (“303(d) List”) does not distinguish between impairments occurring in dry-weather and wet-weather. Plainly, the effluent limits for lead and copper set in the Tentative Permits should apply in both wet and dry weather, as the WRPs’ discharges occur regardless of weather and flow conditions in their respective reaches and could contribute to impairments throughout the year. If monitoring efforts show that the permittee already meets the numeric targets and allocations under certain flow regimes, they will be in compliance with the Permit. Thus we urge the Los Angeles Regional Water Quality Control Board (“Regional Board”) to address this general deficiency by including a year-round effluent limit for lead in the Pomona Tentative Permit and for copper in the San Jose Creek Tentative Permit.

To summarize, we have several issues with the Tentative Permits as currently written. Overall, the decrease in the number of effluent limits along with the decreased monitoring frequency of many constituents in the effluent make these permits substantially less protective than the current



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permits. The Tentative Permits should be strengthened as outlined above. Most importantly, the Regional Board should work with the State Board to push forward a policy on chronic toxicity limits in NPDES permits. Another permit cycle should not go by without any progress on this issue.

If you have any questions or would like to discuss any of these comments, please feel free to contact us at (310) 451-1500. Thank you for your consideration of these comments.

Sincerely,

Kirsten James, MESM  
Water Quality Director

W. Susie Santilena, MS, E.I.T  
Water Quality Scientist